

## Child In Need of Care (CINC) Code

Guardians *ad litem*

Nuts and Bolts

October 2016

### K.S.A. 38-2202 (d) “Child In Need of Care”

- Without parental care and control
- Without care, control necessary for health
- Abused and neglected
- Has been placed for care or adoption in violation of the law
- Has been abandoned
- Truancy

K.S.A. 38-2202 (d) “Child In Need of Care” (cont.)

- **Runaway** from home
- Runaway from court ordered placement
- Residing in home with a child who has been abused and neglected
- **Has been subject to human trafficking, aggravated human trafficking, or sexual exploitation**

Police Protective Custody/  
*Ex parte* Orders

## PPC- K.S.A. 38-2232

- (e) no longer than 72-hours excluding weekends, holidays, and other days without clerks
  - No judicial action
  - NOT a judicial removal

## *Ex Parte*- K.S.A. 38-2242

- (b)(1) probable cause is the standard
- (b)(2) 72-hour rule
  - cannot stack with PPC
- Court **MUST** find the following to issue the *Ex Parte* Order of Protective Custody
  - Reasonable efforts have been made and failed **OR** an emergency exists [K.S.A. 38-2242(f)(1)(B)]
  - AND**
  - Child is likely to sustain harm if not immediately removed, **OR** allowing the child to remain in the home is CTW of the child, **OR** immediate placement is in the BI of the child
- **IS** an initial removal
  - The order **MUST** contain the above findings and be child specific. You **CANNOT Nunc Pro Tunc** the findings.

## Orders of Temporary Custody

### Orders of Temporary Custody- K.S.A. 38-2243

- (b) 72-hours excluding weekends, holidays, and other days without clerks
- (d) 24-hour notice to parents
- If PPC, this is the initial removal. If *ex parte*, it is not.
- (i) Same findings as *ex parte* necessary

## Adjudication

### Adjudication- K.S.A. 38-2251

- (c) 60-days from filing unless extended for good cause (must be documented)
- If by stipulation then must ask questions in K.S.A. 38-2248

## Informal Supervision

### Informal Supervision- K.S.A. 38-2244

- CINC Diversion
  - Six months, can be extended
    - One year, if out of home
    - Two years, if in home
  - (c) revocation

## Disposition

### Disposition- K.S.A. 38-2253

- (b) within 30-days from adjudication unless good cause
- Case planning (permanency planning) and custody

## Permanency

### Permanency Planning

- Assures that children have permanency and stability in their living situations and continuity of family relationships and connections
- Paramount: permanency, safety, and well-being
- In consultation with:
  - children 14 years of age or older (where possible)
  - child's parents

## Permanency- K.S.A. 38-2264

- Court or Citizen Review Board
- Types of permanency determinations:
  - reintegration;
  - adoption;
  - permanent custodian; or
  - another planned permanent living arrangement (APPLA)
    - child 16 years of age or older and
    - document compelling reasons

## Permanency- K.S.A. 38-2264 (cont.)

- The court shall:
  - reasonable efforts have been made by appropriate public or private agencies to rehabilitate the family and achieve the permanency goal in place at the time of the hearing
    - if the child is able
    - by attendance at the hearing or by report to the court
  - reasonable and prudent parenting standard has been met and whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities
  - document the efforts made by the secretary to help the child prepare for the transition from custody to a successful adulthood
  - make a judicial determination explaining why, as of the date of the hearing, APPLA is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian or be placed with a fit and willing relative.

## Permanency- K.S.A. 38-2264 (cont.)

- The court shall:
  - ask the child about the desired permanency outcome for the child;
  - intensive, ongoing and, as of the date of the hearing, unsuccessful permanency efforts made by the secretary to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian or an adoptive parent;
  - make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian or be placed with a fit and willing relative.

## Permanency- K.S.A. 38-2264 (cont.)

- Held within 12 months of the date the court authorized the child's removal from home and not less frequently than every 12 months thereafter
- Reintegration Viable/ Not viable finding
  - not viable, must set a hold a permanency hearing within 30 days of determination

## Permanency- K.S.A. 38-2264 (cont.)

- If reintegration is no longer viable (the court will consider):
  - a stable placement with a relative
  - services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned
  - compelling reasons are documented in the case plan to support a finding that neither adoption nor appointment of a permanent custodian are in the child's best interest.
- If reintegration is not a viable alternative and either adoption or appointment of a permanent custodian might be in the best interests of the child, the county or district attorney or the county or district attorney's designee shall file a custodian within 30 days and the court shall motion to terminate parental rights or a motion to appoint a permanent set a hearing on such motion within 90 days of the filing of such motion.

## Same; notice- K.S.A. 38-2265

- Who:
  - child (14 years of age or older)
  - child's foster parent or parents or permanent custodian providing care for the child
  - preadoptive parents for the child (if any)
  - the child's grandparents at their last known addresses or to the closest relative of each of the child's parents whose address is known (if grandparents are not available)
  - the person having custody of the child
  - upon request, by any person having close emotional ties with the child and who is deemed by the court to be essential to the deliberations before the court.
- Type:
  - first class mail (not less than 10 business days before the hearing)
  - notice by mail is not required if the court orally notifies a party or interested party of the time and place of the hearing

## Termination of Parental Rights/Finding of Unfitness

### Voluntary relinquishment- K.S.A. 38-2268

- Any parent or parents may relinquish parental rights to the Secretary with consent of the GAL and the Secretary
- Must be in writing and acknowledged by a judge
- If a parent has relinquished a child to the secretary based on a belief that the child's other parent would relinquish the child to the secretary or would be found unfit, and this does not occur, the rights of the parent who has relinquished a child to the secretary shall not be terminated
- Does not terminate the right the child of the child to inherit from or through the parent

## Termination of Parental Rights/Finding of Unfitness- K.S.A. 38-2269

- (b) (1-9) and (c) (1-4) Unfitness Factors
- (a) unfit by conduct or condition unlikely to change in the foreseeable future
- (g) Court determines if termination is in BI of child, primary consideration to PME of the child
- Presumptions- K.S.A. 38-2271
  - (a) refers to K.S.A. 60-414 presumptions under civil code
  - if cause of presumption is relevant to unfitness, then K.S.A. 60-414 (a) presumptions and shifts burden to parent
  - (b) if not relevant, considered another piece of evidence

## Adoption Safe Families Act

## Purpose

- Creates the link between the section IV-E of the Social Security Act and removal findings/permanency hearing findings

## Highlights

- Timeframes and Findings
  - case plan (permanency planning)
  - RE to prevent removal (Emergency Exists)
  - contrary to the welfare
  - permanency hearings
  - reasonable efforts to finalize permanency plan
  - mandatory termination petition filing

## Impact to your work

- If the RE/CTW findings are not made at the initial removal
  - prevents DCF from drawing down IV-E funds (foster care payments, training for staff, etc.)
  - prevents DCF from drawing down IV-E adoption subsidies
  - delinks the child from receiving Medicaid after permanency is reached

## Fostering Connection Act

## Highlights

- Extends and expands adoption incentives
- Creates an option to provide kinship guardianship assistance payments
- Creates an option to extend eligibility of IV-E foster care, adoption, assistance and kinship guardianship payment to the age of 21
- De-link adoption assistance from Aid to Families with Dependent Children
- Provides the tribes the ability to operate their own IV-E programs

## Impact to your work

- Sibling placements
- Educational Stability
- Transition Planning
- Federal Parent Locator Service
- Kinship Navigator Program

## Strengthening Families and Preventing Sex Trafficking Act

### Highlights

- Protecting children and youth at risk of sex trafficking
- Improving opportunities for foster youth and supporting permanency
- Implemented in Kansas by Senate Bill 418

## Impact to your work

- Missing and runaway youth must be reported to NCIC and NCMEC
- Reasonable and prudent parenting standard
- APPLA is restricted to children 16 years and older
- Children 14 years and older shall participate in the development of their case plan
- Permanency hearings must document:
  - reasonable and precedent parenting standard
  - compelling reasons for the use of APPLA
  - efforts to achieve a higher permanency